TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM [redacted] 1922

No. [redacted]146

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

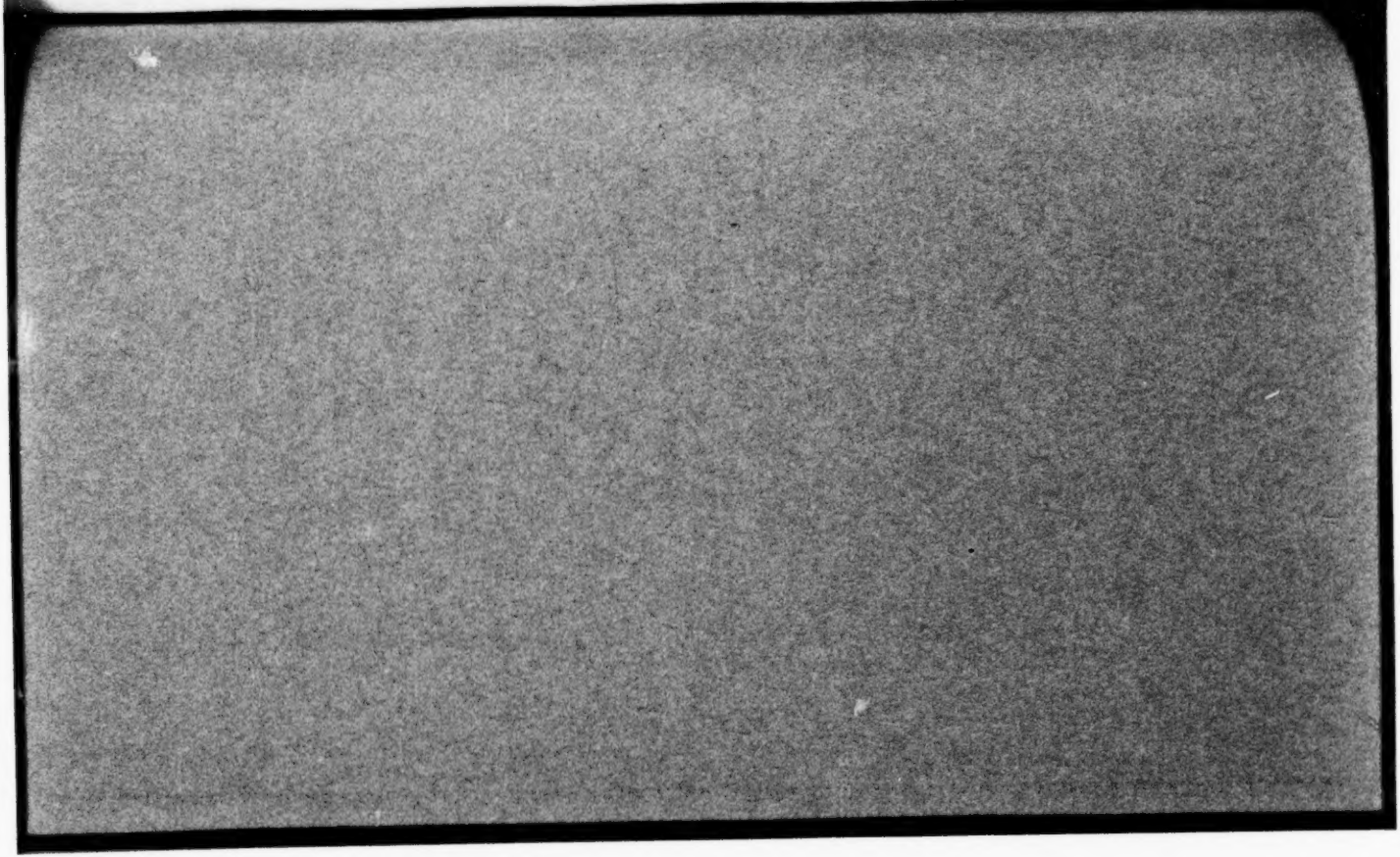
vs.

FRIEND W. RICHARDSON, AS TREASURER OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED AUGUST 12, 1921.

(26,422)



(28,422)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 467.

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

vs.

FRIEND W. RICHARDSON, AS TREASURER OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1 In the Supreme Court of the State of California.

S. F. No. —.

THE PULLMAN COMPANY (a Corporation), Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO.

Honorable Geo. A. Sturtevant, Judge.

2 In the Superior Court of the City and County of San Francisco, State of California.

No. 62,218, Dept. No. 8.

THE PULLMAN COMPANY (a Corporation), Plaintiff,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant.

Amended Complaint.

Plaintiff, by leave of the court, files this, its amended complaint, and alleges that:

I.

Plaintiff is, and at all the times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and engaged in the business of furnishing sleeping cars and parlor cars to railroad companies in said State of California, and in all other states of the United States of America, some of said cars running entirely within the said State of California, and some from points without the State passing
3 through said State of California to points in other states and some running from points without the state to points within said state, and from points within said state to points without said state, but none of said cars, during the year ending December 31, 1913, ran from points within California to other points within California, and in the journey passed out of the said state, except three sleeping cars which, during the period beginning September 22, 1913, and ending December 11, 1913, ran between the City of

Oakland, in said state and the Town of Susanville, in the said state, over lines of railroad partly within the State of California and partly within the State of Nevada. In all said cars plaintiff transacts, and at all times herein mentioned has transacted, a sleeping car business, viz: it furnishes, and at all said times has furnished to the passengers of said railroads, while being transported in said cars as aforesaid, berths and seats in said cars so running entirely within said state and in said cars passing through, into and out of said state as aforesaid, and personal attendance and services rendered to such passengers by the agents and servants of the plaintiff in connection therewith.

II.

At all the dates and times herein named, prior to the 4th
4 day of January, 1915, E. D. Roberts was the Treasurer of the State of California, and on said last named date the defendant became, and has ever since been, and now is, the Treasurer of said state.

III.

The gross receipts of plaintiff on all of its said business beginning and ending entirely within said State of California, for the year ending December 31st, 1913, was the sum of one million, one hundred ninety-six thousand, seven hundred nineteen and 76/100 ($1,196,719.76) dollars. The proportion of the gross receipts of plaintiff for said year ending December 31st, 1913, from all said business of plaintiff passing through, into or out of said state, equal to the proportion that the mileage within said state bore to the total mileage over which such interstate business of plaintiff was done, was the sum of one million, four thousand, six hundred eighty-one and 57/100 ($1,004,681.57) dollars.

IV.

Within the time prescribed by law, to wit: on or about the 9th day of March, 1914, plaintiff filed a report signed and sworn to by one of plaintiff's officers, namely: plaintiff's secretary, upon a form prescribed by the State Board of Equali-ation, and showing, for the year ending said 31st day of December, 1913, in such detail
5 and in manner and form prescribed by said State Board of Equalization, the various items of information required to be shown by section 9 of an act entitled, "An act to carry into effect the provisions of section 14 of article XIII of the Constitution of the State of California, as said Constitution was amended November 8th, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance companies, for the benefit of the state, all relating to revenue and taxation," approved April 1st, 1911. In addition to the items so required to be shown, said report contained the following statement:

"This company is, and was during all of said year, engaged in the business of furnishing sleeping cars and parlor cars to railroad companies, in which passengers are transported, some of which cars run in the State of California, and some run from other states into California and out of California into other states, and some of such cars pass through the State of California, in the transportation of passengers in interstate commerce, and in all such cars this company transacts a sleeping car business and furnishes to the passengers berths and seats in its cars in the State of California, and from other states into the State of California, and from California
6 to other states, and in and on cars that pass through the State of California. That under said item 15 there is stated the gross receipts from such classes of business as said State Board of Equalization has designated in its blank report to be reported separately, and that each item of gross receipts so shown in this report contains and includes that proportion of the gross receipts from the business passing through, into and out of the State of California as above stated which the mileage within that state bears to the total mileage over which such interstate business was done, as defined by section 2 of chapter 335 of the Statutes of California of 1911, approved April 1, 1911, as amended by chapter 6 of the Statutes of 1913, approved February 3, 1913, and as required by paragraph 8 of section 9 of said chapter 335, as amended by chapter 320, statutes of 1913, approved June 12, 1913.

The amount of gross receipts from business beginning and ending within the State of California, was....	$1,196,719.76
The proportion of the gross receipts from interstate business, being the proportion upon the mileage basis as stated above, and as provided in said chapter 335 as amended by chapter 320, Laws of 1913, amounted to	1,001,681.57

7 The Pullman Company protests that no portion of its receipts from its business done in its cars from other states into California, or from California into other states, or from other states passing entirely through California to points beyond California, is taxable in or by the State of California, and that no portion thereof may lawfully be taxed in or by the State of California, and that any tax levied by the State of California upon its interstate business as above stated, or upon the revenue therefrom, will constitute a burden upon interstate commerce, and will violate the provisions of article 1, section 8, of the Constitution of the United States, and will tax the business and property of said company beyond and without the State of California."

V.

At some time between the 1st day of April, 1914, and the third Monday before the first Monday in July, 1914, the exact time being to plaintiff unknown, said board assessed and levied a tax of four (4%) per cent upon the gross receipts of plaintiff for the year end-

ing December 31st, 1913, on all business of plaintiff beginning and ending entirely within said state, which amounted to one million, one hundred ninety-six thousand, seven hundred nineteen
8 and 76/100 ($1,196,719.76) dollars, as aforesaid, and on that proportion of the gross receipts from all plaintiff's business passing through, into or out of said state that the mileage within said state bore to the total mileage over which such interstate business was done, which amounted to one million, four thousand, six hundred eighty-one and 57/100 ($1,004,681.57) dollars, as aforesaid, to wit: upon the total sum of two million two hundred and one thousand, four hundred one and 33/100 ($2,201,401.33) dollars; said tax amounted to the sum of eighty-eight thousand, fiftysix and 06/100 ($88,056.06) dollars, and was assessed to the plaintiff.

VI.

Thereafter, and in the month of July, 1914, the Controller of State of said State of California, by notice partly written and partly printed, dated July 1st, 1914, notifies plaintiff of the levy of said tax for the year 1914 amounting to said sum of eighty-eight thousand, fifty-six and 06/100 ($88,056.06) dollars, and that the same was then due and payable, and therein and thereby further notified the plaintiff of the time when said tax would become delinquent and the penalties to be added thereto if not paid. Said notice was received by the plaintiff at its office in Chicago, Illinois, in due course of United States mail, on the eleventh day of July, 1914.

9 VII.

On or about the 18th day of July, 1914, said Controller of State began the publication of a notice, which said notice appeared thereafter in three daily newspapers, one published in the City of Sacramento, one in the City and County of San Francisco, and one in the City of Los Angeles, all in said State of California. Said notice specified; first, that said Controller had received from said Board the record of assessments for state taxes; second, that the taxes therein assessed were due and payable on the first Monday of July, 1914, and that one-half thereof would be delinquent on the sixth Monday after said first Monday of July, 1914, at six o'clock P. M., and that unless paid to the State Treasurer at said City of Sacramento prior thereto, fifteen (15%) per cent would be added to the amount thereof, and unless paid prior to the first Monday in February, 1915, at six o'clock P. M., an additional five (5%) per cent would be added to the amount thereof, and that the remaining one-half of said taxes would become delinquent on the first Monday in February, 1915, at six o'clock P. M., and if not paid to said State Treasurer at said City of Sacramento prior thereto, five (5%) per cent would be added to the amount thereof.

10 VIII.

On the 13th day of August, 1914, at said City of Sacramento, plaintiff tendered to said E. D. Roberts, as Treasurer of said State of California, the sum of forty-seven thousand eight hundred and sixty-eight and 80/100 ($47,868.80) dollars, gold coin of the United States of America, as the tax upon plaintiff's said business for said year ending December 31st, 1913, and, at the same time and place, plaintiff served upon and delivered to said E. D. Roberts, as said Treasurer, a written notice and tender theretofore executed by plaintiff. Said notice and tender was in the words and figures following:

"To the State Treasurer, of the State of California:

"Please take notice that the undersigned, The Pullman Company, has received from the State Controller of said State of California his official notice to said company dated July 1st, 1914, stating that: 'the tax levied by the State Board of Equalization upon your corporation for the present year amounts to 88,056.06 dollars' and that said tax was then due and payable.

"The amount specified in said Controller's notice is a tax computed, levied and assessed at 4 per cent upon the sum of $2,201,-401.33, gross receipts of said company for the year ending
11 December 31st, 1913, from operation within the State of California, as such gross receipts from operation within the state are defined in section 7 of chapter 335 of the Laws of 1911, and in paragraph 8 of section 9 of said chapter 335 as amended by chapter 320 of the Laws of 1913, with respect to companies operating partly within and partly without the state.

"Said The Pullman Company in the year 1914 made and filed a report with said State Board of Equalization of said State of California, in accordance with the provisions of said section 9 as amended, and therein stated the amount of all said gross receipts for said year, and therein separately stated the amount of said gross receipts from all said company's business during said year beginning and ending entirely within the State of California, which was $1,196,719.76, and also therein separately stated the amount of that proportion of the gross receipts from all the business of said company passing through, into or out of the State of California, defined in said section 7 of said chapter 335, and in paragraph 8 of section 9 of said chapter 335 as amended by said chapter 320 of the Laws of 1913, which was $1,004,681.57, and in such report said The Pullman Company protested that its gross receipts from interstate commerce were not taxable by said state.

12 "That said The Pullman Company is ready and willing to pay and now and herewith offers to pay and tenders to you as such State Treasurer the sum of $47,868.80, taxes for the present year, being 4 per centum upon said sum of $1,196,719.76, the gross receipts of said company from operation, to wit: all receipts on business of said company beginning and ending entirely

within the State of California during the year ending December 31st, 1913.

"Dated this 13th day of August, 1914.

THE PULLMAN COMPANY,
By T. C. COOGAN,
Its Attorney."

Said E. D. Roberts, as said Treasurer, then and there accepted said written notice and tender and filed the same in his office, and then and there refused to accept said sum tendered as aforesaid, or any sum less than eighty-eight thousand fifty-six and 06/100 ($88,056.06) dollars.

IX.

Thereafter, and on said 13th day of August, 1914, plaintiff claiming and protesting that a part of said sum of eighty-eight thousand fifty-six and 06/100 ($88,056.06) dollars, assessed to and levied against it by the said State Board of Equalization as taxes for the year 1914, to wit: the sum of forty thousand, one hundred
13 eighty-seven and 26/100 ($40,187.26) dollars, was void, paid to the defendant the said sum of eighty-eight thousand fifty-six and 06/100 ($88,056.06) dollars, and at the time of such payment to said defendant of said sum of eighty-eight thousand fifty-six and 06/100 ($88,056.06) dollars, the plaintiff filed with the said State Controller a written protest stating that it claimed and protested that a part of the assessment on which said sum of eighty-eight thousand fifty-six and 06/100 ($88,056.06) dollars was levied, assessed, based or computed, to wit: one million, four thousand six hundred eighty-one and 57/100 ($1,004,681.57) dollars on which the tax assessed and claimed amounts to forty thousand, one hundred eighty-seven and 26/100 ($40,187.26) dollars, was void, and therein specified the grounds upon which such claims was founded, to wit:

That the receipts from such business passing through, into or out of the State of California are gross receipts and earnings from interstate business, and that any and all taxes levied, assessed, based or computed upon such gross receipts from interstate business, or any part thereof, are a burden upon interstate commerce and a regulation of such commerce, to wit: commerce among the several states contrary to the provisions of section 8 of article 1 of the Constitution of the United States, and also that said taxes levied, as-
14 sessed, based or computed upon such gross receipts from interstate business, or any part thereof, are void for the further reason that they are assessed upon the income of property and business situated beyond the State of California, and to tax the same is to take property without due process of law in violation of section 1 of article 14 of the amendments to the Constitution of the United States.

X.

Said sum of one million, four thousand, six hundred eighty-one and 57/100 ($1,004,681.57) dollars, and the whole thereof, was received by the plaintiff for berths and seats in its cars employed in transporting passengers in interstate commerce, used and occupied by persons while being transported in said cars from other states into the State of California, from the State of California into other states, and from other states through the State of California to still other states beyond the limits of California, and for the attendance and service of plaintiff's agents and servants in connection with such transportation; that none of said earnings of one million, four thousand, six hundred eighty-one and 57/100 ($1,004,-681.57) dollars, was receipts for berths or for service in any way in the transportation of passengers between points in the
15 State of California, but in the journey passing out of said state; that the only earnings the plaintiff company had for such business was between September 22, 1913, and December 11, 1913, for berths and service in transporting passengers in three sleepers running between the City of Oakland in the said State of California, and the Town of Susanville, in said state, but in the course of the journey passing out of said state; that said earnings amounted to one hundred ninety-three and 30/100 ($193.30) dollars, all of which said earnings were reported to the State of California as part of the local earnings and contained in said sum of one million, one hundred ninety-six thousand, seven hundred nineteen and 76/100 ($1,196,719.76) dollars, as hereinbefore alleged; that said berths and seats were furnished and used and said attendance and service furnished and performed partly in California and partly in another state or other states in journeys in plaintiff's said cars from one state to another, and that no part thereof was for such use entirely within the State of California or entirely within any other state, and that said sum and the whole thereof was receipts of the plaintiff from business conducted by it partly in one state and partly in another state or other states and carried on from one state into another state or states, and that said business and the whole thereof in which said receipts were made and earned
16 was commerce among the several states.

XI.

Said sum of one million, four thousand, six hundred eighty-one and 57/100 ($1,004,681.57) dollars and the whole thereof was received by the plaintiff in interstate commerce as aforesaid, and was a proportion as hereinbefore alleged, of income earned and received by plaintiff from the business conducted as aforesaid by plaintiff, to wit: the furnishing of berths and seats and attendance and service rendered by the agents and servants of plaintiff to persons who were transported in its said cars principally and for the most part while said cars were without and beyond said State of California, and which said service was principally and for the most

part performed without and beyond the limits of said State of California and which cars were not, nor was any part thereof, situated in the State of California except while employed in making trips upon railroads from one state to another, in the transportation of passengers into, out of or through said State of California in commerce among the several states.

XII.

That part of said tax of eighty-eight thousand, fifty-six and 06/100 ($88,056.06) dollars so levied and assessed by said State
17 Board of Equalization, to wit: forty thousand one hundred eighty-seven and 26/100 ($40,187.26) dollars and the whole thereof, which was levied, assessed, computed and charged, or either levied, assessed, computed or charged, upon said sum of one million four thousand six hundred eighty-one and 57/100 ($1,004,681.57) dollars, and upon any and every part, portion or proportion of the gross receipts from plaintiff's said business, or any business passing through, into or out of said State of California, and passing from one state to another state, was and is a tax on the earnings of the plaintiff in its business conducted from one state to another state or states, and was and is a tax on commerce among the several states, and a burden on such commerce, under and by virtue of a statute of California, and was and is a tax on the conduct of said commerce and on plaintiff's right to engage therein in California, in violation of subdivision 3 of section 8, article 1, of the Constitution of the United States.

XIII.

That part of said tax of eighty-eight thousand, fifty-six and 06/100 ($88,056.06) dollars so levied and assessed by said State Board of
18 Equalization, to wit: forty thousand one hundred eighty-seven and 26/100 ($40,187.26) dollars, and the whole thereof, levied, assessed, computed and charged, or either levied, assessed, computed or charged, upon said sum of one million, four thousand six hundred eighty-one and 57/100 ($1,004,681.57) dollars, and upon and any every part, portion or proportion of the gross receipts from plaintiff's said business, or any business passing through, into or out of said State of California, and passing from one state to another state, was and is a tax on the income of property and business of the plaintiff situated without and beyond the State of California, and the enforcement of said tax against the plaintiff and said payment thereof required by said E. D. Roberts, as said Treasurer, as provided by said statute of California and as hereinbefore set forth, did in fact take from plaintiff its property and deprive the plaintiff of its property without due process of law, in violation of the provisions of section 1 of the fourteenth amendment to the Constitution of the United States, to wit: said sum of forty-thousand one hundred eighty-seven and 26/100 ($40,187.26) dollars.

XIV.

By the statute of the State of California under which said tax was levied and assessed, plaintiff's right to continue to do business
19 in said State of California is made dependent on the payment, on or before a date fixed in any by said statute, of said tax so levied and assessed by said State Board of Equalization as aforesaid, amounting to eighty-eight thousand fifty-six and 06/100 ($88,056.06) dollars, which includes said sum of forty thousand, one hundred eighty-seven and 26/100 ($40,187.26) dollars, so levied as aforesaid at four (4%) per cent on said sum of one million, four thousand, six hundred eighty-one and 57/100 ($1,004,681.57) dollars, receipts from plaintiff's said business in interstate commerce, as hereinbefore alleged; and in and by said statute, it is further provided and is made unlawful for the plaintiff to exercise its powers or to transact any business in said State of California after a date fixed by said statute if plaintiff shall not have paid to the state all taxes, penalties and costs as in said statute prescribed and levied, which is and are the taxes hereinbefore set forth, including said tax levied on receipts from interstate commerce; and it is further provided in said statute that if any person, after the date so fixed, shall exercise any of the powers or transact any business for or in behalf of plaintiff, except to settle the affairs of plaintiff, such person shall be guilty of a misdemeanor and upon conviction shall be punished by a fine for each day the violation of said statute continues, and
20 in and by said statute plaintiff's right to continue to do business in said State of California or to transact any business therein, other than to settle its affairs, was and is made dependent upon a tax which said statute provides shall be levied, assessed, computed and charged upon the earnings of the plaintiff in interstate commerce and which was so levied, assessed, computed and charged thereon as hereinbefore alleged, and plaintiff's right to continue to do business in said State of California or to transact any business therein, other than to settle its affairs, was and is by said statute made dependent upon payment of a tax upon income of property and business of the plaintiff without and beyond said State of California, levied, assessed, computed and charged thereon by and under a statute of said State of California, which said statute provides shall be levied, assessed, computed and charged upon such income of property and business of the plaintiff.

XV.

After plaintiff paid to said E. D. Roberts, as said Treasurer, as aforesaid, said sum of eighty-eight thousand, fifty-six and 06/100 ($88,056.06) dollars, to wit: on said 13th day of August, 1914, at said City of Sacramento, plaintiff demanded of said E. D.
21 Roberts, as said Treasurer, that said sum of forty thousand, one hundred eighty-seven and 26/100 ($40,187.26) dollars, paid under protest as aforesaid, be returned and repaid to plaintiff,

but said E. D. Roberts, as said Treasurer, then and there refused and neglected and has ever since refused and neglected to return or repay to plaintiff said sum or any part thereof. On the 3rd day of February, 1915, at said City of Sacramento, plaintiff demanded of defendant that said sum of forty thousand one hundred eighty-seven and 26/100 ($40,187.26) dollars, paid under protest as aforesaid, be returned and repaid to plaintiff, but defendant then and there refused and neglected and has ever since refused and neglected to return or to repay to plaintiff said sum or any part thereof. Neither said sum nor any part thereof has been returned or repaid to plaintiff.

Wherefore, plaintiff prays judgment against defendant, as said Treasurer, for the sum of forty thousand, one hundred eighty-seven and 26/100 ($40,187.26) dollars, with interest thereon from the 13th day of August, 1914, and its costs herein expended.

T. C. COOGAN,
BURKE CORBET,
Attorneys for Plaintiff.
G. S. FERNALD,
F. B. KELLOGG,
Of Counsel.

22 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Frank L. Wood, being duly sworn, deposes and says:

That he is an officer, to wit: Superintendent, in and for the State of California, of the plaintiff in the above entitled action; that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and, as to those matters, that he believes it to be true.

FRANK L. WOOD.

Subscribed and sworn to before me, this 7th day of February, 1916.

[SEAL.]

CHARLES R. HOLTON,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed.)

Service of the within amended complaint is hereby admitted this 9th day of February, 1916.

U. S. WEBB,
RAYMOND BENJAMIN,
Attorneys for Defendant.

Filed Feb. 9, 1916.
H. I. MULCREVY,
Clerk,
By H. BRUNNER,
Deputy Clerk.

23 [Title of Court and Cause.]

Answer to Amended Complaint.

Now comes the above named defendant and answering plaintiff's amended complaint herein alleges and denies as follows:

I.

Answering paragraph III of said complaint, defendant denies that the proportion of the gross receipts of plaintiff for said year ending December 31, 1913, from all said business of plaintiff passing through, into, or out of said state equal to the proportion that the mileage within said state bore to the total mileage over which said interstate business of plaintiff was done, was the sum of one million, four thousand, six hundred eighty-one and 57/100 ($1,004,681.57) dollars, and in this behalf alleges that the proportion of the gross receipts of plaintiff for said year ending December 31, 1913, from all said business of plaintiff passing through, into or out of said state equal to the proportion that the mileage within said state bore to that portion of the total mileage over which such interstate business of plaintiff was done based upon the mileage between the State of California and the City of Chicago, State of Illinois, was the sum of one million, four thousand, six hundred eighty-one and
24 57/100 ($1,004,681.57) dollars, and in this behalf defendant further avers that in reporting such proportion of gross receipts from interstate earnings, the plaintiff at no time reported to the State of California, any part or portion of such interstate earnings that comprehended earnings of plaintiff east of Chicago points, though such earnings were in part attributable to business destined to or from the State of California.

II.

Answering paragraph V, defendant denies that said board at any time assessed and levied, or assessed or levied, a tax of four or any other per cent upon the gross receipts of plaintiff for the year ending December 31, 1913, on all or any business of plaintiff beginning and ending entirely within said state, or upon that or any proportion of the gross receipts thereof, or any of plaintiff's business passing through, into or out of said state that the mileage within said state bore to the total or any portion of the mileage over which such interstate business was done, or upon any part or portion of said gross receipts, or at all, and denies that said board levied and assessed, or levied or assessed a tax of four or any other per cent upon the sum of two million, two hundred and one thousand, four hundred one and 33/100 ($2,201,401.33) dollars of plaintiff's receipts,
25 or upon any other sum of money comprising plaintiff's receipts; admits that the tax levied upon plaintiff's property, assessed as hereinafter alleged, amounted to the sum of eighty-eight

thousand, fifty-six and 06/100 ($88,056.06) dollars, and that said tax was assessed to the plaintiff.

III.

Answering paragraph XII, defendant denies that said or any tax, or any part of any tax levied, assessed, computed and charged, or levied, or assessed, or computed or charged by said State Board of Equalization was and is, or was or is a tax on the earnings of plaintiff in its business conducted from one state to another state or states, or was and is, or was or is a tax on commerce among the several states, or a burden on such commerce, or was and is or was or is a tax on the conduct of said commerce or on plaintiff's right to engage therein in California, in violation of any law whatsoever.

IV.

Answering paragraph XIII, defendant denies that said tax, or any part of any tax levied, assessed, computed and charged, or levied, or assessed, or computed or charged, by said State Board of
26 Equalization was and is, or was or is a tax on the income of any property and business, or property or business of plaintiff situated without and beyond, or without or beyond the State of California, and denies that the enforcement of said or any tax against plaintiff, or the payment thereof required by the defendant, did in fact or otherwise take from plaintiff its or any property, or deprive plaintiff of its or any property without due process of law, in violation of any law whatsoever, or any sum of money whatsoever.

V.

Answering paragraph XIV, defendant denies that by the or any statute of the State of California, under which said or any tax was levied and assessed, plaintiff's right to continue to do business in said State of California is made dependent upon the payment, on or before any date fixed in and by any statute, or said tax levied and assessed by said State Board of Equalization, and denies that in and by said or any statute it is provided or made unlawful for the plaintiff to exercise its powers, or to transact its or any business in said State of California after any date fixed by said statute, if plaintiff shall not have paid to the state all taxes and costs as in said or any statute prescribed or levied; and denies that it is provided
27 in said or any statute that if any person, after the or any date so fixed, shall exercise any of the powers or transact any business for or in behalf of plaintiff, except to settle the affairs of plaintiff, such person shall be guilty of a misdemeanor and upon conviction shall be punished by a fine for each day the violation of said statute continues, and denies that in and by said statute plaintiff's right to continue to do business in the State of California, or to transact any business therein other than to settle its affairs was and is made dependent upon any tax which any statute provides shall

be levied, assessed computed and charged, or levied, or assessed, or computed or charged upon the or any earnings of the plaintiff in interstate commerce, and denies that plaintiff's right to continue to do business in said state, or to transact any business therein, other than to settle its affairs, was and is or was or is by said or any statute made dependent upon payment of the or any tax upon property and income of property and business, or upon property or income of property or business of the plaintiff without and beyond, or without or beyond said State of California.

By way of special answer and defense, defendant alleges that the State Board of Equalization of the State of California, between the first day of April, 1914, and the third Monday before the first
28 Monday in July, 1914, did levy a tax for state revenue upon the franchise, cars and other rolling stock, and all other property tangible and intangible, real, personal and mixed, of plaintiff and all and every part thereof, and none other, used exclusively in the operation of plaintiff's business in said state; that said property and the whole thereof was then and at all times had been employed by plaintiff as a whole in a going business, and was then and at all times had been engaged and used as a unit by plaintiff in such business in the State of California; that in its business in the State of California plaintiff then had and at all times possessed and enjoyed a monopoly of and in such business to the exclusion of all other persons and corporations; that the value of said property and the whole thereof as a unit for purposes of taxation was in January, 1914, ascertained and determined by the legislature of the State of California to be of that value which by levying thereon the rate of taxation levied upon other property and against other persons similarly situated would result in a tax upon the value of said property so employed in said business equal in amount to four per cent of that part of the gross receipts of plaintiff for the year ending December 31, 1913, earned in its said business performed entirely within
29 the State of California and attributable upon a proportionate mileage basis to its said business done entirely within the State of California, as said gross receipts from operation of such business are defined by section 14 of article XIII of the Constitution of the State of California; that the tax levied upon said property of plaintiff and the whole thereof, in accordance with and based upon the value of the same as found and taxed by the legislature of the State of California, was and is the sum of eighty-eight thousand, fifty-six and 06/100 ($88,056.06) dollars; that the gross receipts of plaintiff which were reported to and considered by and to which said State Board of Equalization resorted to ascertain and determine the tax that plaintiff should pay upon its said property in accordance with its value, ascertained and determined as a unit as hereinbefore alleged, were and all of them were receipts for the year ending December 31, 1913, arising solely from the business done by plaintiff entirely within the State of California, and that proportion of its interstate earnings arising from its business and attributable to the State of California upon a mileage basis, as said gross receipts from operation are defined by section 14, article XIII of the Constitution of

the State of California, and none other; that all of said receipts were
earned by plaintiff by and with and through the operation
30 of said property of plaintiff in its business so valued and situ-
ated, and so used and engaged as a unit in the said business o
plaintiff within the State of California, and included within said as
sessment of plaintiff's property, and no part of said assessment or o
said tax is or was against or upon, or based upon plaintiff's earnings
as earnings arising from its business conducted either in this or an
other state, or between this and any other state, or between othe
states passing through this state, and no part of said assessment o
of said tax was or is an assessment or a tax upon plaintiff's incom
as income arising from said or any of said property, or any othe
property, or from said or any other business of plaintiff situate
within or without this state.

Wherefore defendant prays that plaintiff take nothing by its ac
tion, and defendant recover judgment for his costs.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

31 (Endorsed.)

Due service of the within answer to amended complaint admitte
this 17th day of March, 1916.

T. C. COOGAN AND
BURKE CORBET,
G. S. FERNALD AND
F. B. KELLOGG,
Of Counsel,
Attorneys for Plaintiff.

Filed Mar. 18, 1916.

H. I. MULCREVY,
Clerk,
By H. BRUNNER,
Deputy Clerk.

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

The above entitled action having been duly tried without a jur
and submitted to the court for its decision on the nineteenth day o
March, 1917; and the court having duly considered said matter, doe
now find the following as the facts in said case:

I.

That the allegations contained in plaintiff's amended complaint in paragraphs I, II, III, IV, VI, VII, VIII, IX, X, XI, and XV are true.

32

II.

That the allegations contained — plaintiff's amended complaint in paragraphs V, XII, XIII and XIV are not true.

III.

That the State Board of Equalization of the State of California, between the first day of April, 1914, and the third Monday before the first Monday in July, 1914, did levy a tax for state revenue upon the franchise, cars and other rolling stock, and all other property tangible and intangible, real, personal and mixed, of plaintiff and all and every part thereof, and none other, used exclusively in the operation of plaintiff's business in said state; that said property and the whole thereof was then and at all times had been employed by plaintiff as a whole in a going business, and was then and at all times had been engaged and used as a unit by plaintiff in such business in the State of California; that in its business in the State of California plaintiff then had and at all times possessed and enjoyed a monopoly of and in such business to the exclusion of all other persons and corporations; that the value of said property and the whole thereof as a unit for purposes of taxation was in January, 1914, ascertained and determined by the legislature of the State of California to be of that value which by levying thereon the rate of taxation levied
33 upon other property and against other persons similarly situated would result in a tax upon the value of said property so employed in said business equal in amount to four per cent of that part of the gross receipts of plaintiff for the year ending December 31, 1913, earned in its said business performed entirely within the State of California and attributable upon a proportionate mileage basis to its said business done entirely within the State of California, as said gross receipts from operation of such business are defined by section 14 of article XIII of the Constitution of the State of California; that the tax levied upon said property of plaintiff and the whole thereof, in accordance with and based upon the value of the same as found and taxed by the legislature of the State of California, was and is the sum of eighty-eight thousand, fifty-six and 06/100 (88,056.06) dollars; that the gross receipts of plaintiff which were reported to and considered by and to which said State Board of Equalization resorted to ascertain and determine the tax that plaintiff should pay upon its said property in accordance with its value, ascertained and determined as a unit, were and all of them were receipts for the year ending December 31, 1913, arising solely from the business done by plaintiff entirely within the State of California,

and that proportion of its interstate earnings arising from its
34 business and attributable to the State of California upon a mileage basis, as said gross receipts from operations are defined by section 14, article XIII of the Constitution of the State of California, and none other; that all of said receipts were earned by plaintiff by and with and through the operation of said property of plaintiff in its business so valued and situated, and so used and engaged as a unit in the said business of plaintiff within the State of California, and included within said assessment of plaintiff's property, and no part of said assessment or of said tax is or was against or upon, or based upon plaintiff's earnings, as earnings arising from its business conducted either in this or any other state, or between this and any other state, or between other states passing through this state, and no part of said assessment or of said tax was or is an assessment or a tax upon plaintiff's income as income arising from said or any of said property, or any other property, or from said or any other business of plaintiff situated within or without this state.

Conclusions of Law.

From the foregoing facts the court concludes:

35 That plaintiff is not entitled to the relief demanded in its amended complaint and that defendant should have judgment for his costs.

Dated, Oct. 18, 1918.

GEO. A. STURTEVANT,
Judge of the Superior Court.

(Endorsed:) Filed Oct. 18, 1918. H. I. Mulcrevy, Clerk, by W. S. Shafer, Deputy Clerk.

[Title of Court and Cause.]

Judgment.

The above entitled action having duly come on for trial, the parties represented by their respective counsel, and oral and documentary evidence having been offered in behalf of the plaintiff, and the cause thereupon argued and submitted to the court, and the court having duly considered the same and having made and entered findings of fact and conclusions of law herein:

It is ordered that judgment be and the same is hereby given for the defendant, and that defendant have further judgment for his costs.

Done in open court this 2nd day of December, 1918.

GEO. A. STURTEVANT,
Judge.

36 (Endorsed:) Filed Dec. 2, 1918. H. I. Mulcrevy, Clerk. by H. Brunner, Deputy Clerk. Recorded Dec. 3, 1918, 10.20 o'clock A. M., volume 124, page 192. H. I. Mulcrevy, Clerk, by H. S. Jones, Deputy Clerk.

[Title of Court and Cause.]

Clerk's Certificate to Judgment Roll.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause, and recorded in judgment book 124 of said court, at page 192. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said cause.

Witness my hand and seal of said Superior Court this 4th day of Dec., A. D. 1918.

[SEAL.]

H. I. MULCREVY,
Clerk.

By S. A. BLUM,
Deputy Clerk.

37 (Endorsed:) Filed Dec. 4, 1918. H. I. Mulcrevy, Clerk, by S. A. Blum, Deputy Clerk. Recorded judgment book 124, page 192.

[Title of Court and Cause.]

Notice of Intention to Move for a New Trial.

To Friend W. Richardson, as Treasurer of the State of California, defendant in the above-entitled action, and to Hon. U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys for said defendant:

You and each of you will please take notice that the above named plaintiff, The Pullman Company, intends to move the above entitled court to vacate and set aside the decision and judgment of the court rendered and entered in the above entitled cause, and to grant a new trial of said cause, upon the following grounds, to wit:

1. Insufficiency of the evidence to justify the decision.

2. That the decision is against law.

3. Errors in law occurring at the trial and excepted to by this plaintiff.

38 Said motion will be made on the minutes of the court in said cause.

Dated December 10th, 1918.

T. C. COOGAN,
CORBET & SELBY,
Attorneys for Plaintiff, The Pullman Company.

(Endorsed.)

Service of the within and foregoing notice admitted by copy, this 10th day of December, A. D. 1918.

U. S. WEBB,
Attorney General of the State of California, and
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

Filed Dec. 11, 1918.

H. I. MULCREVY,
Clerk,
By J. J. RAFFERTY,
Deputy Clerk.

[Title of Court and Cause.]

Minute Order Denying Plaintiff's Motion for a New Trial.

Friday, January 10, 1919.

Present: Honorable Geo. A. Sturtevant, judge, and officers of the court.

In this action plaintiff's motion for a new trial herein coming on regularly this day for hearing. Counsel for the respective
39 parties present and consenting thereto that said plaintiff's motion be submitted to the court for consideration and decision without argument. The court being fully advised in the premises. It is ordered that said plaintiff's motion be and the same is hereby denied.

[Entered in minutes of department No. 8, volume 129, page 138.]

[Title of Court and Cause.]

Notice of Appeal and Stipulation Waiving Undertaking on Appeal.

To Hon. U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys for Friend W. Richardson, as Treasurer of the State of California, defendant, and H. I. Mulcrevy, Esq., clerk of the Superior Court in and for the City and County of San Francisco, State of California:

Please take notice that the plaintiff above named, The Pullman Company, does hereby appeal from the judgment and the whole thereof, rendered in open court on December 2nd, 1918, in the above entitled action, "that judgment be and the same is hereby given for

the defendant, and that defendant have further judgment for
40 his costs," which said judgment was on December 4th, 1918, recorded in the office of said clerk aforesaid in volume 124 of judgment records at page 192.

T. C. COOGAN AND
CORBET & SELBY,
Attorneys for the Plaintiff, The Pullman Company.

Due and personal service of the foregoing notice of appeal admitted upon us this 31 day of January, A. D. 1919.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Friend Washington as Treasurer of the State of California, Defendant.

And now, January 31, A. D. 1919, the undertaking on appeal in the foregoing cause, required by law to be given by The Pullman Company, plaintiff and appellant, in order to perfect said appeal, be and the same is by the defendant hereby waived.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent.

41 (Endorsed:) Filed Feb. 3, 1919. H. I. Mulcrevy, Clerk, By H. Brunner, Deputy Clerk.

[Title of Court and Cause.]

Bill of Exceptions.

To be Used on Appeal from Judgment.

Be it remembered, that the trial of this cause commenced in department No. 8, Honorable George A. Sturtevant presiding, on the 19th day of March, 1917, and fully heard on said day, and submitted, Messrs. T. C. Coogan and Corbet & Selby appearing as attorneys for plaintiff, The Pullman Company, a corporation, and Honorable U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Chief Deputy Attorney General, appearing as attorneys for said defendant; the cause was tried before the court sitting without a jury, and thereupon the following proceedings were had and taken:

FREDERICK L. SIMMONS, being called as a witness for plaintiff, and being sworn, testified as follows:

"I live in Chicago, State of Illinois, and am the assistant general auditor of the plaintiff, The Pullman Company. I have been such assistant general auditor for about five years, and prior to
42 that time for fifteen years I was auditor of receipts for the same company, and for three years prior to that time I was traveling auditor, and for the three years prior to that I was assistant property clerk, all for the same company. During the year 1911 there was prepared by The Pullman Company under my direction and supervision a statement of the receipts of the fares of passengers from its business based upon gross receipts for the year 1910 and ending December 31st, 1910, for use and reference to the State Board of Equalization of the State of California.

California's proportion of the interstate earnings for the year ending December 31st, 1913, was $1,004,681.57. That is made up of fares received for the use of seats and berths in pullman cars from passengers whose trips originated at points within the State of California and terminated at points outside of the State of California, or whose trips originated at points without the State of California and terminated at points within the State of California, or whose trips originated outside the State of California and passed through and terminated at other points beyond the State of California."

On cross-examination he testified further:

"During the fifteen years that I was auditor of receipts,
43 I had charge of tax matters and carried the supervision of these tax matters into my new position. I used California mileage as a divisor as compared with the total mileage covered by each fare. If the transaction was the sale of a berth from San Francisco to Reno, Nevada, that particular earning was divided upon the mileage basis giving to California the proportion of the total trip that the mileage from San Francisco to the state line bore to the mileage from the state line to the City of Reno. That was the method pursued with respect to each and every through trip. If the person purchased transportation from San Francisco to New York City, we divided it according to the mileage between San Francisco and New York City. We have only one through line running from San Francisco to points east of Chicago and that is the line operated between San Francisco and Washington via New Orleans, and in that particular case the passenger would travel right through in one car on a pullman ticket, one contract. That fare would be pro-rated according to the mileage, giving California its mileage proportion based upon the mileage covered by the fare between San Francisco and Washington. In other cases, however, where we have no through or continuous line of sleeping cars operating between San Francisco and New York, we might, on some occasions,
44 sell through coupon tickets reading from San Francisco to New York, splitting perhaps at St. Paul, Minnesota, Kansas City, New Orleans or St. Louis. In such cases the earnings would

be prorated on the mileage in California as compared to the through mileage between San Francisco and New York, so as to give California its mileage proportion of its through fare. This has been done in every instance where there was a through passenger train between New York and San Francsco."

Q. I buy a ticket from San Francisco to New York and apply to your company at San Francisco for a pullman ticket for an upper berth. How far will you sell me that ticket from San Francisco without change of cars?

A. From San Francisco to Chicago or St. Louis or New Orleans.

Q. Now, then, what do I do? What am I compelled to do by the rules of your company when I arrive, for instance, at Chicago?

A. That would, of course, depend on how long you wished to remain at Chicago and what route you wished to travel over.

Q. I want to go out the same night. I get in at nine o'clock in the morning and want to go out at two o'clock in the afternoon.

A. Then you would apply to another ticket office and buy
45 another pullman ticket, a separate ticket, separate contract, which would be honored in another car over another road and on a separate contract, from Chicago to New York. You would not be identified as the passenger whose trip originated in San Francisco nor could it be determined in any way that you came from San Francisco.

Q. The sum and substance of it is, Mr. Simmons, that The Pullman Company does not apportion to the State of California any portion of the money which you derive from the sale of a berth from Chicago to New York under the circumstances of that kind of a trip, do you?

A. No, sir, we do not.

Q. When do you report to the State of California any portion of the receipts of your company when the situation is reversed and the inception of the trip is New York and its destination is San Francisco? Don't you report any portion of those receipts from New York to Chicago for the trip passing through Chicago?

A. We would on a through coupon ticket reading from New York to San Francisco.

Q. Are you speaking of a tourist ticket?

A. Either standard or tourist.

Q. Either standard or tourist?

A. We quite frequently sell through coupon tickets reading from New York or Boston or Washington.

46 Q. On the basis of one hundred tickets sold, what is the percentage of the through coupon ticket?

A. I could not say.

Q. It is very negligible, is *is* not, Mr. Simmons?

A. No.

Q. That is, in comparison to the other kind?

A. The other kind, the local tickets, are much more frequent. There are, however, a great many coupon tickets sold.

Q. What about a tourist trip from San Francisco in a tourist

car routed from San Francisco through to New York? In that instance what do you report?

A. That line runs via New Orleans and we report California's mileage proportion of the through rate collected from San Francisco to Washington provided the passenger travels through between those points.

Q. There is a transfer at Washington that you are not concerned with?

A. If the passenger had New York as his destination, he would transfer at Washington.

Q. Transfer on the Pennsylvania lines?

A. Yes, or on the B. & O.

Q. Do you control the sleeping car privileges on the Pennsylvania lines?

A. Yes, sir.

47 Q. Then, as a matter of fact, Mr. Simmons, you only report to the State of California the mileage proportion of all interstate earnings between Chicago and points west of Chicago and California? Now I put the accent on the word "all," you note.

A. No.

Q. When it comes to reporting the mileage proportion to the State of California, you report the mileage proportion on all interstate earnings between San Francisco and points west of Chicago, St. Louis and New Orleans that had anything to do with transportation in California?

The Court: Just a moment before you start in about that, let us see if I understand this.

Q. Your figures, Mr. Simmons, are made up from the ticket coupons returned to the office?

A. Yes, sir, or in the case of cash fares, from the berth checks, the cash fare checks.

Q. And those will show the coupon ticket where the passenger started in and where his trip ended?

A. Yes sir, that is correct.

Q. They will show a through ticket from where he started in to the termination of that through ticket?

A. Yes sir.

Q. Would they show any others?

48 A. It would also show in the case of a coupon ticket where the transfers from one car to another are indicated, in other words, the points of transfer.

Q. On the so-called through ticket, would there be shown the point of transfer?

A. Wherever it is necessary to transfer from one car to another in order to reach his destination.

Q. I don't understand the system on, as you use the expression, the through ticket. Is there any transfer—on the other hand, does he remain in the same sleeper from one place to another?

A. No sir, that is what we call a local ticket. Where he does that, the ticket consists of one part, where the passenger remains in one

car, where it is not necessary for him to change to another car, in order to reach his destination.

Q. That is called a local ticket?

A. Called a local ticket. The other kind of ticket is a coupon ticket which might consist of two, three, four or five different coupons, depending on how many times it is necessary for the passenger to transfer from one car to another in order to reach his destination. In both cases California is credited with its mileage proportion of such fares where they touch California. I might say, how-
49 ever, that it seems immaterial whether we pro-rate on the San Francisco, New York mileage, or the San Francisco, Chicago mileage, that is to say, if we take the fare from Chicago to San Francisco.

Mr. Benjamin (interrupting): If your honor please, I object very much to this volunteer statement and argument by the witness going into the record.

The Witness: Very well, pardon me for that.

Mr. Corbet: It is in response to the court's question.

Mr. Benjamin: I dislike to interrupt the witness in his answer to the court's question, but it is my record that I must stand on.

The Witness: Pardon me for going into it.

The Court: I don't see how immaterial testimony, if it is immaterial, can possibly affect a case of this kind, and if it is not immaterial, why it certainly should be elicited.

Mr. Benjamin: The witness started in on a matter of argument rather than on an answer to your honor's question.

Mr. Corbet: No, an explanation, Mr. Benjamin.

The Court: I think you may make the statement, Mr. Simmons. There is no jury here to be prejudiced.

A. Let us take two cases, to make a thorough illustration.
50 One is the man who buys a through ticket from New York to San Francisco, a coupon ticket, splitting at Chicago, which means he must transfer from one car to another at Chicago. Having purchased a through Pullman ticket, we are able to identify him as a through passenger, and he paid $18 for that through ticket from New York to San Francisco. That $18 is pro-rated so that California receives credit for its mileage proportion of that $18, based on the mileage in California as compared with the total mileage between San Francisco and New York. Take the other case, to further illustrate, we pick up a passenger at Chicago who is going to San Francisco. He may have come from New York, or he may not. If he did come from New York, we don't know whether he came in a Pullman car or rode in a coach or a chair car or how he came, nor do we know by what route he came. We sell him a separate ticket, a separate contract, reading from Chicago to San Francisco. Being unable to identify him as a through passenger, if he was a through passenger, and his fare from Chicago to San Francisco, $13, is, consequently, pro-rated according to the mileage from San Francisco to Chicago. I think that illustrates both cases. And the result to California in dollars and cents would be practically

the same in both cases. The $13 fare being pro-rated on the
51 mileage in California as compared with the mileage between San Francisco and Chicago, and the $18 fare being pro-rated on the mileage in California as compared with the mileage from San Francisco to New York. So that, with the exception of possibly some difference in pennies, the amount applicable to California would be practically the same in both cases. I think perhaps that describes the two kinds of tickets.

Mr. Benjamin: Let me, Judge, if I may, ask a question or two?

The Court: Yes.

Mr. Benjamin proceeds with his cross-examination:

Q. What is the mileage from San Francisco to the state line of California?

A. I do not know what the distance is from San Francisco to the state line. The mileage from San Francisco to Chicago depends entirely upon the route selected, whether by the Southern Pacific, Union Pacific and the Northwestern. By the Southern Pacific and Union Pacific and the Northwestern, the distance is, I believe, some 2,260 miles. Following the same course from Chicago to New York by the Lake Shore and Michigan line and the New York Central, the mileage is a little over 900 miles. The Pullman lower berth from San Francisco to Chicago is $13 and from Chicago to New York is $5.

52 Q. And you say that the percentage, the division, would be practically the same?

A. Yes sir, the proportion. Of course, you will understand there will be slight changes on account of the different routes. The mileage is different; for instance, the mileage over the Santa Fe is much greater than over the Southern Pacific and Union Pacific and Northwestern between San Francisco and Chicago.

Q. When the mileage increases outside of California, it decreases the proportion to California?

A. It varies according to the routing, of course.

The Court:

Q. Are there any other fares that your records would show excepting those you have mentioned?

A. Well, of course, we have the fares local to the State of California, which I believe are not in question.

Q. But as to those, the interstate trips, are there any other fares that your records will show the history of the passenger's trip, where he commenced and where he ended?

A. No other classification, of course interstate fares that do not touch California.

Mr. Corbet (on behalf of the plaintiff): We now offer in evidence
53 a document headed Monday, July 6, 1914, and signed "T. M. Eby, secretary" and certified to by T. M. Eby, and ask that it be admitted in this case as plaintiff's exhibit "1."

Mr. Benjamin: It is objected to as irrelevant and immaterial and having nothing to do with the issues of this case. It is merely a copy of a certificate of the board as to the record of assessments before they were turned over to the Controller, to the effect that the board made this assessment and that it is made on certain days and in a certain manner with respect to certain property, all of which is admitted in this case.

The Court: The objection will be overruled. Let it be marked as plaintiff's exhibit 1.

(The paper offered was by the clerk marked as Plaintiff's Exhibit 1, and reads as follows:)

"Monday, July 6, 1914.

Board in session, roll called.

Present: Messrs. Collins, Rolkin, Chambers, and Chairman Mitchell. Absent, Mr. McElvaine.

Be it remembered on this day that the State Board of Equalization has, in accordance with the provisions of chapter 335 of the laws of 1911, been in continuous session from the first Monday in March, 1914, to and including this day;

That during said period of time this board has made diligent inquiry and examination to ascertain all property and companies subject to assessment and taxation for state purposes, as required by the Constitution of this state; that said board has faithfully complied with all the duties imposed upon it by the Constitution and laws of the State of California; that the board has not imposed any unjust or double assessment through malice or illwill, or otherwise, nor allowed any company or property to escape a just assessment through favor or reward, or otherwise;

And now, on this day the record of assessments for state taxes for the year 1914 having been completed in all details, and said record having been duly certified by the chairman and secretary of this board, as provided by law, it is ordered that said record of assessments for state taxes be delivered to the Controller.

In accordance with the foregoing, and under and in pursuance of the provisions of sec. 19 of chapter 335, of the laws of 1911, at 12 o'clock meridian of this day, the secretary of the State Board of Equalization duly delivered to the Controller of State the said record of assessments for state taxes.

T. M. EBY,
Secretary."

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, T. M. Eby, do hereby certify that I am, and at all times hereinafter mentioned was, the secretary of the State Board of Equalization of the State of California, and at all said times it was my duty, as such secretary, to keep an accurate record of the proceedings of said board in a book specially provided for that purpose; that I am the legal keeper of, and have in my possession, the original record

of the proceedings taken by said board for the year 1914, at each and every meeting of said board, which said record was made and kept by me as said secretary in a book specially provided for such purposes; that the foregoing and attached writing is a correct copy of all the said record, which pertains to, and shows the proceedings taken by said board at a regular adjourned meeting thereof held at the office of said board in the State Capitol in the City of Sacramento, State of California, on the 6th day of July, A. D. 1914.

In witness whereof, I have hereunto set my hand this 16th day of March, A. D. 1917.

T. M. EBY,
Secretary of the State Board of Equalization of the State of California.

Mr. Corbet: I also offer in evidence, if your honor please,
56 a document dated Monday, August 3, 1914, signed by T. M. Eby, secretary, and certified to on March 5th, 1917, by T. M. Eby, secretary for the State Board of Equalization, and I ask that it be considered as having been read in evidence in this case.

Mr. Benjamin: I would like to have your honor examine that before you rule upon it. We object to it as it is a certain statement in which they say they assess the "following Car Co.'s" and among them is The Pullman Company. It is irrelevant and immaterial, so far as this case is concerned, as the fact is that they did assess the Pullman Company.

The Court: The objection will be overruled. Mark it, Mr. Clerk, as plaintiff's exhibit "2."

(The paper offered was by the clerk marked as Plaintiff's Exhibit "2", and reads as follows):

"STATE OF CALIFORNIA,
County of Sacramento, ss:

I, T. M. Eby, secretary of the State Board of Equalization for the State of California, do hereby certify: That I am the legal keeper of, and have in my possession, the original record of the business transacted and the proceedings taken by the State Board of Equalization for the State of California for the year 1914
57 at each and every meeting of said board; that the foregoing and attached writing is a correct copy of that part of the said record of the business transacted and proceedings taken by the State Board of Equalization for said year, in my possession, which pertains to and shows the proceedings taken by said board at a regular adjourned meeting thereof, held at the office of said board at the State Capitol, in the City of Sacramento, State of California, on the 3rd day of August, A. D. 1914, in fixing, establishing and levying an ad valorem rate of taxation and assessment upon the property within the State of California of The Pullman Company, a corporation, pursuant to the provisions of section 22 of article IV of the Constitution of the State of California, for the year 1914.

In witness whereof, I have hereunto set my hand this 5th day of March, A. D. 1917.

T. M. EBY,
Secretary of the State Board of Equalization of the State of California."

"*Minutes of the State Board of Equalization for Meeting of Monday,* Aug. 3, 1914.

Board in session. Roll called. Present: Messrs. Collins, McElvaine, Rolkin, Chambers and Chairman Mitchell. * * *

In accordance with the provisions of law, the board this day proceeded to, and did, assess all railroads operated in more
58 than one county in this state on the first Monday in March, 1914, which assessments were made for the purpose of collecting the Panama-Pacific International Exposition tax and for refunding of taxes on bond assessments; whereupon the following proceedings were had:

1914 Railroad Assessments: * * *

On motion of Mr. Collins, seconded by Mr. Rolkin, The Pullman Company was assessed for $3,459,920.

Railway Apportionment.

The apportionment of railway assessments having been made as shown by the record of apportionment of railway assessments, which apportionment is based upon the number of miles of each railway, main line in each county, bears to the total mileage of each railway, main line, in the state; moved by Mr. Collins, seconded by Mr. McElvaine, that the board adopt said apportionment. Motion carried by the unanimous vote of the board.

Certificate to Auditors.

The certificates of apportionment of such railway assessments to the several counties were signed this day by the chairman and secretary, as required by law, and were enclosed in envelopes addressed to the several auditors of the counties, by name, title and
59 proper address, registered, and deposited in the United States post office at Sacramento.

Duplicate Rolls to Controller.

The chairman and secretary this day certified to the 'Duplicate record of assessment of railways' and the 'Duplicate record of apportionment of railway assessments', for the year 1914, as required by law, and said duplicates were this day delivered to the Controller.

T. M. EBY,
Secretary."

Mr. Corbett: We also offer in evidence a document dated at Sacramento, California, July 6, 1914, signed by John Mitchell, president, and T. M. Eby, secretary of the State Board of Equalization, and subscribed and sworn to on the 6th day of July, 1914, before Frank C. Jordan, Secretary of State. I ask that that be admitted in evidence and considered as having been read into the record here and given the next number in order.

Mr. Benjamin: Objected to, your honor, as incompetent, immaterial and irrelevant, and, to save time, your honor, I assume we may consider that to be the situation in relation to all of these documents as introduced.

The Court: Yes. It is so ordered, and will be marked as plaintiff's exhibit "3".

60 (The document offered was by the Clerk marked as plaintiff's Exhibit "3," and it read as follows:)

"Office of the State Board of Equalization.

Secramento, California, July 6, 1914.

We, John Mitchell, chairman, and T. M. Eby, secretary, of the State Board of Equalization of the State of California do hereby certify that between the first Monday of March and the first Monday in July, 1914, the State Board of Equalization made diligent inquiry and examination to ascertain all property and companies subject to assessment and taxation for state purposes as required by the Constitution of this state; that said board has faithfully complied with all the duties imposed upon it by the Constitution and laws of the State of California; that said board has not imposed any unjust or double assessment through malice or ill will, or otherwise, nor allowed any company or property to escape a just assessment through favor or reward, or otherwise.

(Signed) STATE BOARD OF EQUALIZATION.
By JOHN MITCHELL,
Chairman.
T. M. EBY,
Secretary.

Subscribed and sworn to before me this sixth day of July, 1914.
FRANK C. JORDAN,
Secretary of State"

61 "*Record of Assessments for State Taxes for the Year* 1914.

Assessments of Quasi-public Corporations, Mentioned and Provided for in Subdivision "A" of Section 14 of Article XIII of the Constitution of California for Property Used Exclusively in the Operation of Their Business in the State of California.

Assessed to all owners when known, and when unknown to unknown owners.

The word 'company' and the word 'companies' used in this record, include persons, partnerships, joint stock associations, companies and corporations.

Car Companies.

No. of company.	Name of company.	Post-office address
3,018,913. Foreign, 1219.	Pullman Company, The.	Chicago, Ill.

(On back of book.)

Assessments for — State Taxes, 1914.

Quasi-Public Corporations.

62 L. H. P.

Tel. & Tel.

Express & Car Co's.

State Board of Equalization.

Description of Operative Property.

Real Estate Other Than City and Town Lots, Subdivisions of Sections, or Metes and Bounds; City and Town Lots; Improvements, Personal Property, Franchise.

City of Richmond, Contra Costa County; In Rancho San Pablo: Lot 58 and por. lot 59, bd. N. E. by Wall's Add. to Richmond, S. W by Pullman Townsite, and west by W. line of lot 59, containing 19.36 acres. Also in Wall's Add. to Richmond: Lots 1 to 32 inc block 167, containing 2.31 ac. Improvement.

And this assessment shall also include, and does hereby include, all other operative property, real and personal, as is set forth and contained in the report of said company on file with the State Board of Equalization, which report is hereby referred to and made a part of this assessment.

Gross receipts to December 31, 1913.	Tax thereon under section 14 of article 13, constitution.		First half of tax.
$2,201,401.33	$88,056.06		$44,028.03
15% added to first half of Tax, —.	5% added to first half of Tax, $—.	Date of payment of first half of tax, Aug. 17, 1914.	Controller's certificate to treasurer, —. Number, 445.

$—.
$44,028.03.
Date, —— —, ——.

63 'Charter forfeited to the State' or 'Right to do busines forfeited' Feb. 27, 1915, 6 P. M.

13.

Remarks: ——.

Protest filed.

(In pencil:) Money paid under protest August 17, 1914."

STATE OF CALIFORNIA,
County of Sacramento, ss:

I, John S. Chambers, Controller of the State of California, do hereby certify: That, as such officer, viz. Controller, I have in my possession, and I am the legal keeper of, the original 'Record of assessments for state taxes' of the State of California for the year 1914; that said 'Record of assessments for state taxes' was delivered to me, as such Controller, pursuant to the statute in such case made and provided, by the Secretary of the State Board of Equalization for said state, having attached thereto the certificate of the chairman and secretary of the State Board of Equalization in the form required by law; that the foregoing and attached writing is a correct copy of a specified part of the said original 'Record of assessments for state taxes' in my possession, viz. that part containing and showing the assessment and the record of assessment of the operative property within the State of California, of The Pullman Company, a corporation, for state taxes for the year 1914.

64 In witness whereof, I have hereunto set my hand and official seal, this 6th day of March, A. D. 1917.

[SEAL.] JOHN S. CHAMBERS,
Controller for State of California."

Mr. Corbet:

Q. We also offer in evidence a portion of a special report on the relative tax burdens, addressed to his excellency Hiram W. Johnson, Governor, as having been made by Carl C. Plehn and Clyde L. Seavey, and dated January 16, 1914, which reads as follows:

"The findings are that property taxed for local purposes is now bearing a tax burden equal to 1.2183% of its true value."

Mr. Benjamin: We object to the offer, upon the ground that it is irrelevant and immaterial and not tending to prove or disprove any of the issues of the case, and proper foundation has not been laid. This is not from any state board, officer or commission, and has no bearing upon the subject. It appears to be a private report made to the Governor of the State by two individuals, unconnected at that time with any of the matters of performing official duties with respect to corporations. Why it should be appended to any state document is beyond me.

Mr. Corbet: It is part of a state document published as part of a state document, by the State Printer, and made a part of
65 the report of the State Board of Equalization to the Governor of the state.

Mr. Benjamin: By two persons not required by law to make any report or any investigation. They might just as well have printed Ayer's Almanac and put it there.

The Court: I understand it would be admissible evidence if they had put it in there. The objection will be overruled. In earlier days, one George C. Perkins and I think two others, made a report to a legislative committee regarding the amount of outstanding Indian War bonds, and it was published the same way and held as admissible evidence in one of those Indian War bond cases. In other words, it is competent. Whether there is anything material about it, I don't know.

Mr. Benjamin: This particular item that they seek to introduce in evidence is not identified in this manner it is not shown as to what period of time it is directed, it is not shown as to what has been considered in arriving at the figure it is not shown that it is directed to any part of the plaintiff's property, or that it concerns any part of it, it is not shown what specific date it is reported that they arrived at this conclusion.

Mr. Corbet: In connection with the offer, we offer page 22 of that report of 1915 and 1916, reading as follows:

66 "In the month of December, 1914, the Governor appointed Professor Carl C. Plehn, the then special advisor of this board, and Mr. Clyde L. Seavey, a member of the State Board of Control, to investigate and report upon the question as to whether the public utilities were paying taxes at the same rate as property taxed for local purposes. This board also participated to some extent in such investigation.

The investigation was a proceeding supplementary to, and might be said to have been a continuation of, the investigation made by this board in 1912, and upon which an exhaustive report was made to the legislature in 1913.

Owing to the limit of time which confronted the investigators in 1914 (the legislature meeting in January, 1915), and for other causes explained in the report of the committee, it was found impracticable to go into the matter of appraisement of local property or a revaluation of the property of the public utilities.

The investigators did, however, collect and arrange considerable valuable data on total assessments, taxes, etc. by which satisfactory conclusions could be arrived at as to percentage of taxes paid to actual values by both local property and public utility
67 property.

The committee reported as a finding of fact 'that property taxed for local purposes is now bearing a tax equal to 1.2183 per cent of its true value', and further set forth in detail the ratios which should be applied to the public utility corporations to properly adjust the tax burdens, which ratios it seems the legislature finally adopted."

FREDERICK L. SIMMONS was here called to the witness stand by Mr. Benjamin to testify on behalf of the defendant.

Direct examination:

The Witness: I am familiar with the railroad companies in California operating Pullman cars. They are the Southern Pacific, the Santa Fe, the Yosemite Valley, the Western Pacific, and the Salt Lake Route. These are all of the lines that run out of the State of California, also running in the State of California.

Q. Are there any other railroads in California that use any sleeping cars other than Pullman cars?

Mr. Corbet: That would be immaterial, because of the fact that the controversy here is one over the interstate earnings, and that would only affect the business of the plaintiff company in connec-
68 tion with the interstate business.

The Court: Read the question, Mr. Reporter.

The Court: The objection will be overruled.

(To which ruling the plaintiff then and there duly excepted and said exception is herein designated as Exception No. 1.)

A. I don't know of any.

Mr. Benjamin:

Q. Your company has a monopoly of the sleeping car business in this state, has it not?

Mr. Corbet: We object to that as calling for a conclusion, your honor.

Mr. Benjamin: That is a fact or not a fact, we submit, your honor.

The Court: The objection will be overruled.

(To which ruling the plaintiff then and there duly excepted and said exception is herein designated as Exception No. 2.)

A. Yes, sir.

Q. Have you some extensive repair shops or paint shops here in California?

A. Yes, sir, we have shops at Richmond, California.

69 Q. Do you do any car building there at Richmond, California?

A. No sir, we do not. The construction plants are at Chicago and at the town of Pullman. The plant at Richmond is only used for repairing. All of this property of the Pullman Company, cars, plant, repair plant, factory plant, are all used and devoted exclusively to the one and the same purpose which we have pleaded in our complaint, that is the business of furnishing sleeping cars for railroads.

Counsel for plaintiff and defendant thereupon stipulated that the operative property of The Pullman Company, plaintiff herein, located in the State of California, including its rolling stock and fran-

chises, had not been subjected to any local taxation of any kind, either state, county or municipal, nor any license tax, other than the tax involved in this action.

The foregoing is all of the evidence that was introduced at the trial of said action, and thereafter the cause was argued and submitted to the court for decision, and the court made its findings of fact and conclusions of law in favor of the defendant and against the plaintiff, on which judgment was entered in favor of defendant and
70 against plaintiff on the 5th day of December, A. D. 1918; and thereafter and on the 10th day of December, A. D. 1918, said plaintiff, The Pullman Company, duly and within due time served upon defendant's attorneys, and thereafter and on December 11th, A. D. 1918, duly filed with the clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, a notice, of which the following is a copy:

[Title of Court and Cause.]

"To Friend W. Richardson, as Treasurer of the State of California, defendant in the above-entitled action, and to Hon. U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys for said defendant:

You and each of you will please take notice that the above-named plaintiff, The Pullman Company, intends to move the above-entitled court to vacate and set aside the decision and judgment of the court rendered and entered in the above-entitled cause, and to grant a new trial of said cause, upon the following grounds, to wit:

1. Insufficiency of the evidence to justify the decision.

2. That the decision is against law.

71 3. Errors in law occurring at the trial and excepted to by this plaintiff.

Said motion will be made on the minutes of the court in said cause.

Dated December 10th, 1918.

T. C. COOGAN AND
CORBET & SELBY,
Attorneys for Plaintiff, The Pullman Company."

Thereafterwards, and on the 3rd day of January, A. D. 1919, the said plaintiff, The Pullman Company, duly and within due time, served upon defendant's attorney, and filed with the clerk of said court herein, a notice, of which the following is a copy:

[Title of Court and Cause.]

"To the above named defendant and to his attorneys, U. S. Webb, Esq., Attorney General of the State of California, and Raymond Benjamin, Esq., Chief Deputy Attorney General, attorneys of record for said defendant:

You will please take notice that the plaintiff, The Pullman Company, pursuant to its notice of intention so to do, heretofore given and served herein, will on Friday, January 10th, A. D. 1919, at the hour of ten (10) o'clock a. m., or as soon thereafter as counsel can be heard, at the court room of department 8 of the above entitled
72 court, situate in the City Hall, located between Van Ness avenue, Polk street, McAllister street and Fulton street, in the City and County of San Francisco, State of California, move the court to set aside the decision and judgment of the court rendered and entered in the above entitled cause, and to grant a new trial of said cause upon the following grounds, to wit:

1. Insufficiency of the evidence to justify the decision.

2. That the decision is against law.

3. Errors in law occurring at the trial and excepted to by this plaintiff.

Said motion will be made on the minutes of the court in said cause.

Dated January 3, 1919.

T. C. COOGAN,
CORBET & SELBY,
Attorneys for Plaintiff, The Pullman Company."

Service of the within and foregoing notice of motion for new trial admitted by copy this 3rd day of January, A. D. 1919.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant."

73 And thereafterwards, and on said 10th day of January, A. D. 1919, at ten o'clock a. m., said motion coming on regularly to be heard, pursuant to said notice, *and* the said motion was by said court on said January 10th, A. D. 1919, denied, to which ruling of the court the plaintiff, The Pullman Company, then and there duly excepted, and said exception is herein designated as Exception No. 3.

Specifications of Errors in Law Occurring at the Trial and Excepted to by the Plaintiff, The Pullman Company.

The errors of law occurring at the trial, excepted to by the plaintiff, The Pullman Company, are three in number, and are assigned as such in the body of the foregoing bill of exceptions; error No. 1 being noted on page 16; error No. 2 being noted on page 17; and error No. 3 being noted on page 18*b*.

Plaintiff now specifies the following particulars in which the evidence is alleged to be insufficient to justify the decision.

I.

The court in its second finding finds the allegations contained in the fifth paragraph of plaintiff's amended complaint are not
71 true. Defendant offered no evidence upon the allegations contained in said paragraph of the amended complaint, the only evidence upon the facts set forth in said paragraph V of plaintiff's amended complaint being that offered by plaintiff, which amply supports the said allegations in said paragraph of the amended complaint, and especially the allegation that the tax assessed and levied was a tax of four per cent upon the gross receipts of plaintiff for the year ending December 31st, 1913. Therefore there was no evidence to justify the court's decision that the allegations of paragraph V of said plaintiff's amended complaint are not true, and the evidence was insufficient to justify such decision by the court.

II.

That the evidence is insufficient to justify the court's decision that the allegations contained in paragraph V of plaintiff's amended complaint are not true; the evidence clearly shows that such allegations are true.

III.

The court in its second finding finds the allegations contained in the XII paragraph of plaintiff's amended complaint are not true.
73 Defendant offered no evidence upon the allegations contained in said paragraph of the amended complaint; the only evidence upon the facts set forth in said paragraph XII of plaintiff's amended complaint was that offered by plaintiff, which amply supports the said allegations in said paragraph of the amended complaint and especially the allegation that that part of said tax of $88,056.06, so levied and assessed by said State Board of Equalization, viz.: $40,187.26, which was levied, assessed, computed and charged or charged upon said sum of $1,004,681.57 and upon any and every part, portion or proportion of the gross receipts from plaintiff's said business, or any business passing through, into or out of said State of California, and passing from one state to another state, was and

is a tax on the earnings of the plaintiff in its business conducted from one state to another state or states, and was and is a tax on commerce among the several states and a burden on such commerce under and by virtue of a statute of California, and was and is a tax on the conduct of said commerce and on plaintiff's right to engage therein in California, in violation of subdivision 3 of section 8, article I of the Constitution of the United States.

IV.

That the evidence is insufficient to justify the court's decision that the allegations contained in paragraph XII of plaintiff's
76 amended complaint are not true; the evidence clearly shows that such allegations are true.

V.

The court in its second finding finds the allegations contained in the XIII paragraph of plaintiff's amended complaint are not true. Defendant offered no evidence upon the allegations contained in said paragraph of the amended complaint; the only evidence upon the facts set forth in said paragraph XIII of plaintiff's amended complaint was that offered by plaintiff, which amply supports the said allegations in said paragraph of the amended complaint, and especially the allegations that that portion of the tax levied and assessed, amounting to the sum of $40,187.26, as alleged in said paragraph XIII of said amended complaint "was and is a tax on the income of property and business of the plaintiff situated without and beyond the State of California and the enforcement of said tax against the plaintiff and said payment thereof required by the defendant as provided by said Statute of California as hereinbefore set forth, did in fact take from plaintiff its property and deprive the plaintiff of its property without due process of law, in violation of the provisions of section 1 of the Fourteenth Amend-
77 ment to the Constitution of the United States, to wit: said sum of $40,187.26 for a tax levied upon and by virtue of a statute of California upon the income of property and business of the plaintiff, situated without and beyond said State of California"; and the evidence was insufficient to and did not justify the said decision of the court.

VI.

That the evidence is insufficient to justify the court's decision that the allegations contained in paragraph XIII of plaintiff's amended complaint are not true; the evidence clearly shows that such allegations are true.

VII.

The court in its second finding finds that the allegations contained in paragraph XIV of plaintiff's amended complaint are not true.

Defendant offered no evidence upon the allegations contained in said paragraph of the amended complaint; the only evidence upon the facts set forth in said paragraph XIV of plaintiff's amended complaint was that offered by plaintiff, which amply supports the said allegations in said paragraph of the amended complaint and the whole thereof.

VIII.

That the evidence is insufficient to justify the court's decision that the allegations contained in the XIV paragraph of
78 plaintiff's amended complaint are not true; the evidence clearly shows that such allegations are true.

IX.

The evidence is insufficient and there is no evidence to justify that portion of paragraph III of said decision, reading as follows, to wit:

"That the State Board of Equalization of the State of California between the first day of April, 1914, and the third Monday before the first Monday in July, 1914, did levy a tax for state revenue upon the franchise, cars and other rolling stock, and all other property tangible and intangible, real, personal and mixed, of plaintiff and all and every part thereof, and none other, used exclusively in the operation of plaintiff's business in said state; that said property and the whole thereof was then and at all times had been employed by plaintiff as a whole in a going business, and was then and at all times had been engaged and used as a unit by plaintiff in such business in the State of California; that in its business in the State of California plaintiff then had and at all times possessed and enjoyed a monopoly of and in such business to the exclusion of all other persons and corporations; that the value of said property and the whole thereof as a unit for purposes of taxation was in
79 January, 1914, ascertained and determined by the legislature of the State of California to be of that value which by levying thereon the rate of taxation levied upon other property and against other persons similarly situated would result in a tax upon the value of said property so employed in said business equal in amount to four per cent of that part of the gross receipts of plaintiff for the year ending December 31, 1913, earned in its said business performed entirely within the State of California and attributable upon a proportionate mileage basis to its said business done entirely within the State of California, as said gross receipts from operation of such business are defined by section 14 of article XIII of the Constitution of the State of California; that the tax levied upon said property of plaintiff and the whole thereof, in accordance with and based upon the value of the same as found and taxed by the legislature of the State of California, was and is the sum of eighty-eight thousand fifty-six and 06/100 dollars ($88,056.06); that the gross receipts of plaintiff which were reported to and considered by and to which said State Board of Equalization resorted to ascertain

and determine the tax that plaintiff should pay upon its said property in accordance with its value, ascertained and determined
80 as a unit as hereinbefore alleged, were and all of them were receipts for the year ending December 31, 1913, arising solely from the business done by plaintiff entirely within the State of California, and that proportion of its interstate earnings arising from its business and attributable to the State of California upon a mileage basis, as said gross receipts from operation are defined by section 14 article XIII of the Constitution of the State of California, and none other; that all of said receipts were earned by plaintiff by and with and through the operation of said property of plaintiff in its business so valued and situated, and so used and engaged as a unit in the said business of plaintiff within the State of California, and included within said assessment of plaintiff's property, and no part of said assessment or of said tax is or was against or upon, or based upon plaintiff's earnings, as earnings arising from its business conducted either in this or any other state, or between this and any other state, or between other states passing through this state, and no part of said assessment or of said tax was or is an assessment or a tax upon plaintiff's income as income arising from said or any of said property, or any other property, or from said or any other business of plaintiff situated within or without this state."

81 That the said plaintiff now specifies the particulars in which said judgment is against law.

1. The court erred in rendering its decision for said defendant.

2. The court erred in rendering its decision against said plaintiff.

Respectfully submitted,

T. C. COOGAN,
BURKE CORBET,
CORBET & SELBY,
Attorneys for Plaintiff.
G. S. FERNALD AND
F. B. KELLOGG,
Of Counsel.

January 13th, 1919.

Due service of the foregoing proposed bill of exceptions admitted upon us at the City and County of San Francisco and State of California.

U. S. WEBB,
Attorney General of the State of California, and
ROBERT W. HARRISON,
Chief Deputy Attorney General,
Attorneys for Above-named Defendant.

82 It is hereby stipulated that the foregoing bill of exceptions to be used on appeal from the judgment by the plaintiff, The Pullman Company, in the above entitled action, sets forth all

of the evidence introduced at the trial of said action, is correct, and that the same may be settled and allowed as presented.

Dated, January 31, 1919.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Defendant.
T. C. COOGAN,
CORBET & SELBY,
Attorneys for Plaintiff.

Judge's Certificate.

The foregoing bill of exceptions, to be used on appeal from the judgment rendered and entered in the action above set forth, wherein The Pullman Company is plaintiff, against Friend W. Richardson, as Treasurer of the State of California, defendant, in favor of said defendant and against said plaintiff, contains all of the evidence introduced in the trial of said action. Said bill of exceptions
83 was prepared, served and presented to the judge of said court within the time allowed by law, and being now properly engrossed and agreed to by said parties, respectively, I do hereby certify that the foregoing bill of exceptions is settled as hereinbefore set forth, and allowed by the court.

Dated, January 31, A. D. 1919.

GEO. A. STURTEVANT,
Judge of said Superior Court.

(Endorsed): Filed Feb. 3, 1919. H. I. Mulcrevy, clerk, by H. Brunner, deputy clerk.

84 *Stipulation to Transcript.*

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Superior Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, April 30, 1919.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Respondent.
T. C. COOGAN,
CORBET & SELBY,
Attorneys for Appellant.
F. B. DANIELS,
G. S. FERNALD,
Of Counsel for Appellant.

85 *Clerk's Certificate to Transcript.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court in and for said city and county, hereby certify that I have compared the foregoing transcript with the original papers in said action, now on file in my office, and with the orders therein made and entered on the minutes of said court, and that the papers and orders therein contained are full, true and correct copies of the originals on file in this office, and of the whole thereof.

I further certify that the erasures and interlineations appearing in the foregoing transcript were made before certifying thereto.

In witness whereof I have hereunto set my hand and affixed the seal of said Superior Court this — day of April, 1919.

[SEAL.] H. I. MULCREVY,
Clerk,

By —— ——,
Deputy Clerk.

86 In the Supreme Court of the State of California.

S. F. No. 9083.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Petition for Writ of Error.

The petition of The Pullman Company, a corporation, Plaintiff and Appellant in the above-entitled action, respectfully shows unto your Honor:

That in said action, then pending in the Supreme Court of the State of California, entitled "The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent," a judgment was entered by the said Supreme Court of the State of California therein on the 4th day of April, A. D. 1921, in favor of the said defendant and respondent, and against the said plaintiff and appellant, which said judgment was duly entered in said Court upon the date aforesaid;

That the time within which a petition for a rehearing could be presented and filed in said action has now expired, and said judgment has become final;

That the said Supreme Court of the State of California is the highest Court of said state in which a decision could be had in this action;

That in the records, proceedings, and decision of said Court a manifest error has occurred, greatly to the damage of the said plaintiff and appellant, The Pullman Company, a corporation,
87 and said plaintiff and appellant was and is aggrieved thereby;

That, as appears in the records and proceedings in said action, there was drawn into question the power of the State of California, under its laws, to tax the gross receipts received by the said plaintiff and appellant, The Pullman Company, a corporation, for carrying passengers from one state to another, as being a tax on interstate commerce, and a tax upon the receipts from the business of the said The Pullman Company, a corporation, plaintiff and appellant, in carrying passengers from one state to another state, and from business within the State of California to points outside of the State of California, and from points outside of the State of California to points within the said State of California, and from points without the State of California, passing through the State of California, to points outside of the State of California, and in violation of Paragraph 3 of Section 8 of Article I of the Constitution of the United States, reading as follows, to wit:

"The Congress shall have power * * * to regulate commerce * * * among the several states";

and there was also drawn into question the power of the State of California, under its laws, to levy, assess, compute, and collect a tax upon the income of the property and business of the plaintiff and appellant, situated beyond the State of California, as to tax the same was to take the property of the plaintiff and appellant without due process of law, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, reading as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws";

all of which fully appear in the records and proceedings in this action;

88 Your petitioner, the above named plaintiff and appellant, in and by its complaint filed in said action, contended that the gross receipts arising from the transaction of interstate commerce are not taxable by the State of California; that the taxation thereof constituted an unwarranted and unlawful interference with and burden upon interstate commerce, as well as a deprivation of your petitioner of its property without due process of law, and a denial to your petitioner of an equal protection of the laws, contrary to the provisions of the Constitution of the United States, which

contentions, on the part of your petitioner, and each and all the
were, in and by the judgment of the Supreme Court of the Sta
California, hereinbefore referred to, decided against your petitio

Wherefore, forasmuch as your petitioner believes that there
manifest error in said decision in said Supreme Court of the S
of California against the several contentions of your petitione
hereinbefore set forth, and in the final judgment in said ac
which is to the great damage of your petitioner, your petitioner p
that your Honor will examine the records of the Supreme Cou
the State of California, in that behalf, and allow your petition
writ of error, and order a transcript of the records, proceedings,
papers upon which said judgment was rendered, duly authentic
to be sent to the Supreme Court of the United States, to the end
said judgment and record may be brought before said Supreme C
of the United States, agreeable to the laws of the United State
that behalf enacted.

BURKE CORBET,
CORBET & SELBY,
F. B. DANIELS,
G. S. FERNALD,
Attorneys for The Pullman Company,
Plaintiff and Appella

Dated: June 30, A. D. 1921.

89 [Endorsed:] Original. S. F. No. 9083. In the Supr
Court of the State of California. The Pullman Compan
Corporation, Plaintiff and Appellant, vs. Friend W. Richardson
Treasurer of the State of California, Defendant and Respond
Petition for writ of error. Filed Jun. 30, 1921. B. Grant Ta
Clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First Nati
Bank Building, San Francisco, California.

90 In the Supreme Court of the State of California.

S. F. No. 9083.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appell

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of Califor
Defendant and Respondent.

Assignments of Error.

And now comes The Pullman Company, plaintiff and appell
and avers that the judgment rendered and entered in the ab
entitled cause by the Supreme Court of the State of California
the fourth day of April, A. D. 1921, is erroneous and unjus
plaintiff and appellant, and that, in the record and proceed
therein, there is manifest error; and plaintiff and appellant

and presents the following assignments of error, upon which it will rely upon its prosecution of its petition for a writ of error in the above-entitled cause:

I.

The Supreme Court of the State of California erred in holding and deciding that the gross receipts of plaintiff and appellant, arising from interstate transportation, being a proportion based upon the proportion of the mileage within the state to the entire mileage over which said business was done, of earnings on all interstate business passing through, into, and out of said State of California, were subject to taxation by the State. The Court should have held that the taxation of said earnings, or any part thereof, by the State constituted an unlawful interference with and burden upon interstate commerce.

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II.

The Supreme Court of the State of California erred in holding and deciding that the assessment of Eighty-eight Thousand and Fifty-six and 06/100 Dollars ($88,056.06), made to the plaintiff and appellant by the State Board of Equalization of the State of California at some time between the first day of April, A. D. 1914, and the third Monday before the first Monday in July, A. D. 1914, was not an assessment and levy of a tax of four per cent. upon the gross receipts of plaintiff and appellant for the year ending December 31, A. D. 1913, on all its business beginning and ending entirely within the State of California, and upon that proportion of the gross receipts from its business passing through, into, or out of said state that the mileage within said State bore to the total mileage over which said interstate business was done, and that said assessment and levy was not in violation of paragraph 3, Section 8 of Article I of the Constitution of the United States.

III.

The Supreme Court of the State of California erred in holding and deciding that the tax, amounting to Forty Thousand One Hundred and Eighty-seven and 26/100 Dollars ($40,187.26), and the whole thereof, levied, charged, and collected from plaintiff and appellant, upon an assessment made by the State Board of Equalization of the State of California, upon the sum of One Million Four Thousand Six Hundred and Eighty-one and 57/100 Dollars ($1,004,681.57), which was the gross receipts and earnings received by the plaintiff and appellant for the year ending December 31, 1913, from the business of plaintiff and appellant passing through, into, or out of the said State of California, and passing from one state to another state, was not a tax on the earnings of the plaintiff and appellant in its business conducted from one state to another state or states, and was not and is not a tax on commerce among the several states, and a burden on such commerce, and was not and is not a tax on the income of property and

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business of the plaintiff and appellant situated without and beyond the State of California, and that the enforcement of said tax against the plaintiff and appellant, and the payment thereof, required by the State Treasurer of said State, as provided by Section 14 of Article XIII of the Constitution of the State of California, and Chapter 335 of the Statutes of said State for the year 1911, approved April 1, 1911, and Chapter 6 of Laws of 1913, did not, in fact, take from plaintiff and appellant its property, and deprive the plaintiff and appellant of its property, to-wit, the said sum of Forty Thousand One Hundred and Eighty-seven and 26/100 Dollars ($40,187.26), for a tax levied under and by virtue of the laws of California, upon the income of the property and business of plaintiff and appellant situated without and beyond said State of California, and that the right of plaintiff and appellant to continue to do business in said State of California was not and is not made dependent on the payment of the said tax on or before a date fixed by said Statute of the said State of California.

The trial court in which said action was brought and tried so decided, and accordingly rendered judgment against plaintiff and appellant and in favor of the defendant and respondent; the Supreme Court of California, in affirming said judgment, made the same holding and decision.

IV.

The Supreme Court of the State of California erred in holding and deciding that the taxes demanded by the State and paid by plaintiff and appellant were taxes upon the property of plaintiff and appellant, subject to taxation in the State of California. The Court should have held that the taxes collected were taxes upon the
93 gross receipts of plaintiff and appellant, derived in part from interstate commerce.

V.

The Supreme Court of the State of California erred in holding and deciding that the action of the Legislature of California in January, 1913, in ascertaining and determining, or in purporting to ascertain and determine, that the property of plaintiff and appellant was of that value which, by levying thereon the rate of taxation levied upon other property and against other persons similarly situated, would result in a tax upon the value of said property employed in the business of plaintiff and appellant, equal in amount to four per cent. of the gross receipts of plaintiff and appellant for the year ending December 31, 1913, within the State of California, including a mileage proportion of the gross receipts of plaintiff and appellant from interstate commerce, and that the action of the State Board of Equalization in considering and resorting to said gross receipts to ascertain and determine the tax that plaintiff and appellant should pay upon its property, amounted to and was an assessment for the purposes of taxation of the property of plaintiff and appellant subject to taxation in and by the State of California, or

that either of said acts, or that both of said acts combined, amounted to the making of an assessment of property for purposes of taxation.

The trial court in which said action was brought and tried so decided, and accordingly rendered judgment against plaintiff and appellant and in favor of defendant and respondent; the Supreme Court of California, in affirming said judgment, made the same holding and decision.

VI.

The Supreme Court of the State of California erred in holding that the tax of $88,056.06, which included 4 per cent. upon
94 $1,004,681.57 gross receipts and earnings from interstate commerce, was a tax upon the property of plaintiff and appellant company subject to taxation in the State of California.

VII.

The Supreme Court of the State of California erred in not holding that the Constitution and statutes of the State of California, being Section 14 of Article 13 of the Constitution, and Chapter 335 of the Statutes for the year 1911, and Chapter 6 of Laws of 1913, so far as the same apply or purport to apply to the gross receipts and earnings of plaintiff and appellant company arising from interstate transportation and the taxes claimed thereunder, are invalid for the reason that the same constitute an unlawful interference with and burden upon interstate commerce in violation of Sub-division 3, Section 8, Article I of the Constitution of the United States, and deprive the plaintiff and appellant of its property without due process of law in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

VIII.

The Supreme Court of the State of California erred in not holding that the Constitution and statutes of the State of California, being Section 14 of Article 13 of the Constitution, and Chapter 335 of the Statutes for the year 1911, and Chapter 6 of Laws of 1913, so far as the same apply or purport to apply to the gross receipts and earnings of plaintiff and appellant arising from interstate transportation, and the alleged taxes assessed thereunder are invalid and constitute a tax upon property of plaintiff and appellant outside of the State of California, in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

IX.

The Supreme Court of the State of California erred in re-
95 fusing to reverse the judgment of the trial court and in failing to give to plaintiff and appellant its rights under the Constitution of the United States, as claimed and set forth in the record in said action.

X.

The Supreme Court of the State of California erred in deciding that the validity of that portion of the Act (Statutes 1913, Chapter 6, page 3, at page 7, Section 24), declaring a forfeiture of the right of a foreign corporation, plaintiff and appellant, to do business in the State of California, if taxes are not paid, is not involved in this action to recover taxes already paid.

Wherefore, plaintiff and appellant, The Pullman Company, prays that the judgment of the Supreme Court of the State of California be reversed for the errors aforesaid, and that said Supreme Court of the State of California be directed to enter judgment in this action in favor of plaintiff and appellant.

BURKE CORBET,
CORBET & SELBY,
F. B. DANIELS,
G. S. FERNALD,
Attorneys for The Pullman Company, Plaintiff and Appellant.

Dated: June 30, A. D. 1921.

96 [Endorsed:] (Copy.) S. F. No. 9083. In the Supreme Court of the State of California. The Pullman Company, a corporation, plaintiff and appellant, vs. Friend W. Richardson, as Treasurer of the State of California, defendant and respondent. Assignments of error. Filed Jun. 30, 1921. B. Grant Taylor, clerk, by M. Corbet & Selby, attorneys at law, 1201 First National Bank Building, San Francisco, California.

97 In the Supreme Court of the State of California.

S. F. No. 9083.

THE PULLMAN COMPANY, a Corporation, Plaintiff and Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Allowance of Writ of Error.

Now comes The Pullman Company, a corporation, plaintiff and appellant above named, on this 30 day of June, A. D. 1921, and files and presents to this Court its petition praying for the allowance of a writ of error, intended to be urged by it, and praying further that a duly authenticated transcript of the records, proceedings, and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may be just and proper;

and, upon consideration of said petition, this Court, desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented;

F. M. A. It is ordered [by this Court]* that a Writ of Error be allowed, as prayed; provided, however, that said The Pullman Company, plaintiff and appellant, give a bond according to law in the sum of Five Hundred Dollars ($500.00), for damages and costs, said bond not to operate as a supersedeas bond.

Witness my hand this 30 day of June A. D. 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

98 [Endorsed:] (Copy.) S. F. No. 9083. In the Supreme Court of the State of California. The Pullman Company, a corporation, plaintiff and appellant, vs. Friend W. Richardson, as Treasurer of the State of California, defendant and respondent. Allowance of writ of error. Filed Jun. 30, 1921. B. Grant Taylor, clerk, by M. Corbet & Selby, attorneys at law, 1201 First National Bank Building, San Francisco, California.

99 In the Supreme Court of the United States.

(S. F. No. 9083.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of California, before you, or some of you, being the highest Court of law or equity of the said state, in which a decision could be had in the said suit between The Pullman Company, Plaintiff and Appellant, and Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their

*[*Words enclosed in brackets erased in copy.]*

validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States, and the decision
100 was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened, to the great damage of the said plaintiff and appellant, The Pullman Company, a corporation, as by its Complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court at Washington within sixty days from the date hereof, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Joseph McKenna, Senior Associate Justice of the Supreme Court of the United States, the 30 day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-one.

Done in the City and County of San Francisco, with the Seal of the District Court of the United States, for the Northern District of California attached.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk of the District Court of the United States, Northern District of California.

Allowed this 30 day of June, 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

101 [Endorsed:] Original. No. —. In the Supreme Court of the United States. (S. F. No. 9083.) The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Writ of Error. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, attorneys at law, 1201 First National Bank Building, San Francisco, California.

102 In the Supreme Court of the United States.

(S. F. No. 9083.)

THE PULLMAN COMPANY, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents:

That we, The Pullman Company, a corporation organized under the laws of the State of Illinois, as principal, and Burke Corbet and John R. Selby, of the County of Santa Clara, State of California, as sureties, are held and firmly bound unto the above-named Friend W. Richardson, as Treasurer of the State of California, defendant in error, in the sum of Five Hundred Dollars ($500.00), to be paid to him, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 29 day of June, A. D. 1921.

Whereas, the above-named The Pullman Company, a corporation, plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States, to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of California;

Now, therefore, the condition of this obligation is such, that, if the above-named plaintiff in error shall prosecute its writ of error to effect, and answer all costs and damages that may be ad-
103 judged, if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

THE PULLMAN COMPANY, A CORPORATION.
By BURKE CORBET,
Its Attorney.
BURKE CORBET. [SEAL.]
JOHN R. SELBY. [SEAL.]

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Burke Corbet and John R. Selby, whose names are subscribed as sureties to the above bond, being severally and duly sworn, each for himself, says: That he is a resident and freeholder of the State of California, and is worth more than the sum in said bond specified as the penalty thereof, over and above all his just debts and liabilities, in property not by law exempt from execution in this state.

BURKE CORBET.
JOHN R. SELBY.

Subscribed and sworn to before me, this 29 day of June, A. D. 1921.

H. B. DENSON,
Notary Public in and for the City and County of San Francisco, State of California.

This Bond approved this 30 day of June, A. D. 1921.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

104 [Endorsed:] (Copy.) (S. F. No. 9083.) In the Supreme Court of the United States. No. —. The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Bond on Writ of Error. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by M. Corbet & Selby, attorneys at law, 1201 First National Bank Building, San Francisco, California.

105 In the Supreme Court of the United States.

(S. F. No. 9083.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Friend W. Richardson, as Treasurer of the State of California, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C. within sixty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of California, wherein The Pullman Company, a corporation, is the Plaintiff in Error, and Friend W. Richardson, as Treasurer of the State of California, is the Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of California, this 30 day of June, A. D. 1921,

[Seal of the Supreme Court of California.]

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

Attest:

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

106 CITY AND COUNTY OF SAN FRANCISCO,
State of California:

July 1, 1921.

We, the undersigned, attorneys of record for the defendant in error in the above-entitled cause, hereby acknowledge due service of the attached citation, and enter an appearance for said defendant in error in the Supreme Court of the United States.

U. S. WEBB,
Attorney General for the State of California, Humboldt Bank Building, San Francisco, California;
RAYMOND BENJAMIN,
Chronicle Building, San Francisco, California, Attorneys for Friend W. Richardson, as Treasurer of the State of California, Defendant in Error.

107 [Endorsed:] Original. No. —. In the Supreme Court of the United States. (S. F. No. 9083). The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Citation. Filed Jun. 30, 1921. B. Grant Taylor, clerk, by M. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

108 In the Supreme Court of the United States.

No. —.

(S. F. No. 9083.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Præcipe.

To the Clerk of the Supreme Court of the State of California:

You are hereby requested that, in transmitting a true copy of the record of the Supreme Court of the State of California to the Supreme Court of the United States, pursuant to the Writ of Error heretofore granted, issued, and filed, as required by law, in the above entitled action, you make up and incorporate into the transcript of the record on such Writ of Error the following portions of the record in said case in your office, namely:

1. Transcript on appeal to the Supreme Court of the State of California;

2. Petition for Writ of Error;

3. Assignments of Error and Prayer for Reversal;

4. Order Allowing Writ of Error;

5. Bond and Approval thereof;

6. Writ of Error;

7. Citation with admissions of service thereupon;

8. Stipulation of the parties as to elimination of the Opinion of the Supreme Court of the State of California from the transcript of the record, and consent to argument and consideration of this and other related cases in the Supreme Court of the United States at one and the same time;

109 9. This Præcipe, Admission of service, and Stipulation;

together with all endorsements of the filing thereof, as to each of said papers, showing the time of the filing of each of them in your office.

Dated: July 18, A. D. 1921.

F. B. DANIELS,
G. S. FERNALD,
BURKE CORBET,
JOHN R. SELBY,
Attorneys for Plaintiff in Error.

We do hereby admit service of the foregoing Request upon us at the City and County of San Francisco, State of California, this 19th day of July, A. D. 1921.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for the Above-named Defendant in Error.

We hereby stipulate and agree that the portions of the record in the above-entitled action, set forth in the foregoing Request of the attorneys for the Plaintiff in Error, are sufficient, and are all of the record of said action deemed necessary by us to be incorporated in the record on the Writ of Error in said action, and when so prepared by the Clerk shall constitute the transcript of the record on the Writ of Error aforesaid.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Attorneys for Defendant in Error.

Dated: July 19, A. D. 1921.

110 [Endorsed:] No. —. In the Supreme Court of the United States. (S. F. No. 9083.) The Pullman Company, a Corporation, Plaintiff in Error, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant in Error. Præcipe. Filed Jun. 30, 1921. B. Grant Taylor, Clerk, by —— ——. Corbet & Selby, Attorneys at Law, 1201 First National Bank Building, San Francisco, California.

111 In the Supreme Court of the United States.

No. —.

(S. F. No. 9083.)

THE PULLMAN COMPANY, a Corporation, Plaintiff in Error,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Stipulation.

Whereas, the following mentioned seven cases, now and heretofore pending in the Supreme Court of the State of California, viz., six thereof being entitled "The Pullman Company, a Corporation, Plaintiff and Appellant, vs. Friend W. Richardson, as Treasurer of the State of California, Defendant and Respondent," and being numbered in said State Court as S. F. Nos, 9080, 9081, 9082, 9083, 9084, and 9085, respectively, and one of said cases being entitled "Walker D. Hines, as Director General of Railroads, and The Pullman Company, a Corporation, Plaintiffs and Appellants, vs. Friend

W. Richardson, as Treasurer of the State of California, Defendant and Respondent," and being numbered therein S. F. No. 9183, were all heard, considered, and determined in the said State Court at one and the same time, and the said State Court did render its decision and opinion therein, in all of said cases, at one and the same time, which said decisions and opinions, so rendered, were identical in each of said cases; and,

Whereas, a Writ of Error to the said Supreme Court of the State of California, from the Supreme Court of the United States, has been allowed, issued, filed, and served, and made returnable to the said Supreme Court of the United States in each of said cases, according to law and the course of procedure and practice of the said
112 Supreme Court of the United States; and,

Whereas, all of said parties in all of said cases deem it advisable to abridge the length of the transcript to be returned with said Writs of Error in each of said cases, consistent with the course of procedure and practice of the said Supreme Court of the United States, and that the said opinion of the said State Court in but one of said cases be taken to the said Supreme Court of the United States, and that all of said cases be considered, heard, and determined upon said Writs of Error in the said Supreme Court of the United States at one and the same time;

Therefore, it is hereby stipulated and agreed, by and between the said respective plaintiffs in error and the said respective defendants in error, in each and all of said cases, that, with the return of the transcripts upon the return of said Writs of Error, in each of said cases, to the Supreme Court of the United States, there be incorporated in said case designated as S. F. No. 9080 a copy of the opinion and decision of the said Supreme Court of the State of California, hereinbefore referred to, and that a copy of the said opinion and decision in each of the other of said several cases be and the same is hereby dispensed with; and,

It is further stipulated and agreed that each and all of said several cases shall be heard, considered, and determined in the Supreme Court of the United States at one and the same time, said opinion and decision in said case designated as S. F. No. 9080 being considered as a part of the transcript of the record in this case;

It is further stipulated that this stipulation be incorporated in and become a part of the transcript of the record upon the return of each of said several writs of error in each of said cases, upon the return of each of said transcripts of the said record in each of said
113 cases to the Supreme Court of the United States.

Dated this 18 day of July, A. D. 1921.

F. B. DANIELS,
G. S. FERNALD,
BURKE CORBET,
JOHN R. SELBY,
Attorneys for the Plaintiff in Error.
U. S. WEBB,
Attorney General for the State of California;
RAYMOND BENJAMIN,
Attorneys for the Defendant in Error.

114 [Endorsed:] (Copy.) (S. F. No. 9083.) In the Supreme Court of the United States. No. —. The Pullman Company, a corporation, plaintiff in error, vs. Friend W. Richardson, as treasurer of the State of California, defendant in error. Stipulation. Filed Jun. 30, 1921. B. Grant Taylor, clerk, by M. Corbet & Selby, attorneys at law, 1201 First National Bank Building, San Francisco, California.

115 S. F. 9083.

THE PULLMAN COMPANY, a Corp., Plaintiff, Appellant,

vs.

FRIEND W. RICHARDSON, as Treasurer of the State of California, Defendant, Respondent.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the proceeding and annexed is a true and correct copy of transcript on appeal in the above entitled case; original petition for writ of error; copy of assignment of errors; allowance of writ of error; original writ of error; copy of bond; original citation; præcipe; and stipulation as to record on writ of error, as shown by the records of my office.

Witness my hand and the Seal of the Court, This 28th day of July, A. D. 1921.

[Seal of the Supreme Court of California.]

B. GRANT TAYLOR,
Clerk,

By I. ERB,
Deputy Clerk.

Endorsed on cover: File No. 28,422. California Supreme Court. Term No. 467. The Pullman Company, plaintiff in error, vs. Friend W. Richardson, as treasurer of the State of California. Filed August 13th, 1921. File No. 28,422.